Vermont.—The disease is present in all parts of the State, the largest epidemics being at Middlebury, St. Johnsbury, Lydonville, St. Albans, Montpelier, Barre, Randolph, and Northfield.

Virginia.—The disease is epidemic in many parts of the State.

West Virginia.—Outbreaks have occurred at Hinton, Bluefield, Martinsburg, Charles Town, and Nitro.

QUARANTINE OF COMMUNICABLE DISEASES.

DECISION OF WASHINGTON SUPREME COURT AS TO REVIEW OF BOARD OF HEALTH ORDERS BY JUDICIAL AUTHORITIES.[1]

A decision rendered by the supreme court of the State of Washington on August 27, 1918, in its effect prohibited the release on habeas corpus of a person detained in quarantine by order of the boards of health of Seattle and the State. This person, arrested for disorderly conduct, had been examined by the health commissioner of Seattle in accordance with an ordinance, found to have syphilis, and sent, in accordance with another ordinance, to an isolation hospital for detention and treatment. He had appealed to the State board of health as provided by law, but the finding of the commissioner had been affirmed. He then petitioned the State supreme court for a writ of habeas corpus, and the superior court for King County was instructed by the latter to inquire into the time and cause of his detention. The superior court issued an order to have him examined before it, and thereupon the health commissioner applied to the supreme court for a writ restraining further proceedings on the ground, among others, that an order of the health commissioner could not be reviewed by the court.

The detained person contended that to deny him such a review was to suspend the writ of habeas corpus, and that the actions and findings of boards of health were open to judicial inquiry the same as other boards, institutions, and officers. Bailey (Habeas Corpus, sec. 106) was quoted to the effect that the determinations of such boards "are not final and conclusive; if they were, then the exercise of such summary power could not be upheld."

In its decision the supreme court states that to follow Bailey would be to make the exercise of the police power a judicial function and holds that "a writ of habeas corpus is a writ of right, and is never to be denied in any case where the liberty of the subject is made the subject of inquiry. But it has always been held that a return showing a legal cause for the detention of a petitioner is enough to suspend the operation of the writ * * *. Where the police power is set in motion in its proper sphere, the courts have no jurisdiction to stay the arm of the legislative branch of the government, for it is operating in its

[1] Reported 3 Washington Decisions 297.

own particular field, where even the courts are powerless to insist upon a procedure consistent with the forms of the common law. Some courts have held that the discretion and judgment of administrative officers, while very broad, is not absolutely and in all cases beyond judicial control, but the tendency is away from this doctrine, for, granting the right to question means and methods in one case, the questions of fact upon which the administrative order is based might be raised in every case, and the object of the law, which is to deal summarily, to the end that imminent peril to the public may be averted, would be wholly overcome. At any rate, a somewhat extended exploration of the books convinces the writer that a court should not inquire into the reasonableness of an ordinance sounding in the police power in any case where the legislative body has provided the means and methods of carrying it out."

In substantiation of this view, the court cites previous decisions by the Washington Supreme Court and a number of decisions by the United States Supreme Court in regard to the examination or quarantine of immigrants, one of the latter holding that "where a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted."

Some additional points were raised by counsel in the case, notably the question of the constitutionality of the quarantine law, which leaves to the boards of health definitions and classification of diseases to be quarantined. In regard to this point the supreme court said that "this court has not heretofore considered similar laws as a delegation of legislative power or authority. The legislation is that of the legislative body, but it is not always practical to meet every phase of the necessity that has called for the law by the enactment of a general statute. * * * Nor is there any legal reason for denying the power to quarantine summarily, or to restrain for treatment, a citizen or subject because the authority may be abused or the law maladministered in a given case."

One of the points made by the commissioner was that he could not bring his ward into court for examination without subjecting himself to the penalties of the quarantine law; but the supreme court held that "if the court has jurisdiction to inquire into the cause of his detention, resort to examination and expert opinion by those skilled in the diagnosis of disease would not be a breaking of the quarantine."

The contention of the detained person, that the city of Seattle had no authority to pass health ordinances or to create the office of health commissioner, was overruled by the supreme court.